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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

COCKS, JOSIAH C

ART UNIT PAPER NUMBER

3749

DATE MAILED: 04/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/954,446

Applicant(s)

STACY ET AL.

Examiner

Josiah Cocks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on RCE filed 3/25/2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 26-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/25/2004 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 26-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Lucke* (US # 5,211,106) in view of *Gebhardt et al.* (US # 6,044,833) and *Smith et al.* (US # 4,965,435).

*Lucke* discloses in Figures 1-5 a cooking oven similar to that described in applicant's claims 26-45 comprising a cooking chamber that includes a chamber air recirculation loop (60), a conveyor (22) (see col. 5, lines 48-55), an upper manifold and lower manifold (see upper and lower areas of housing 20) and a plurality of louvers/baffles (44 and 46) connected with respect to the upper and lower manifolds for controlling the air flow between the manifolds (see col. 4, lines 57-59).

In regard to the limitations of the claims reciting a plurality of louvers arranged in both the upper and lower manifolds, to have selected multiple louvers in each of the upper and lower manifolds would have been simply a matter of duplicating a known part (i.e. the louvers 44 and 46) and is not regarded as patentably distinct (see MPEP § 2144.04 (VI)(B)).

*Lucke* does not disclose a heat exchanger and specifically a curved heat exchanger, an adjustment arm for the louvers, or a plurality of interchangeable modules that contain a portion for the cooking chamber, conveyor and plurality of louvers.

*Gebhardt et al.* teaches a baking oven in the same field of endeavor of the oven of *Lucke* wherein the oven of *Gebhardt et al.* includes a curved/serpentine heat exchanger (12) in fluid communication with the cooking chamber and with an air recirculation system.

*Smith et al.* teaches a baking oven in the same field of endeavor of the oven of *Lucke* wherein the oven of *Smith et al.* includes a manual adjustment arm (250a) extending from the oven for external operation of a gate/louver (250) inside the oven. *Smith et al.* also teaches upper

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and lower manifolds that are in the form of a plurality of separate and individual modules (70).

In regard to claims 10 and 23, it would be inherent that as the modules of *Smith et al.* are separate these modules would be replaceable and as they are identical (see Fig. 1) these modules would be interchangeable.

Therefore, in regard to claims 26-45, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the cooking oven of *Lucke*; to incorporate the curved/serpentine heat exchanger of *Gebhardt et al.* as such a heat exchanger desirably heats recirculated air supplied to the cooking chamber and the serpentine shape is particularly effective in transferring heat (see *Gebhardt et al.*, col. 1, lines 33-50), and to incorporate the adjustment arm and individual modules of *Smith et al.* as the adjustment arm allows external manipulation of internal louvers to allow for control of air provided to air manifolds to adjust air velocity and temperature of upper and lower manifolds (see *Smith et al.*, col. 5, lines 16-25, and col. 8, lines 16-28) and the use of a plurality of individual modules desirably allows for control of air through each module separate from the other modules (see *Smith et al.*, col. 3, lines 7-28).

### ***Response to Arguments***

5. Applicant argued in the response filed 6/25/2003 that the cited references do not show an adjustment arm that opens a louver and correspondingly closes another louver. However, in the Office Action mailed 9/22/2003 the examiner made the following observations and conclusions:

The primary reference *Lucke* shows a plurality of louvers in the form of a first louver (44) controlling air flow to an upper manifold and a second louver (46) controlling air flow to a lower manifold. The *Smith et al.* reference is relied upon as a teaching reference as it shows a baking oven in the same field of endeavor as *Lucke*. In *Smith et al.*, a single

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louver (250) is manipulated by means of an actuation arm (250a) to control air-flow to upper and lower manifolds. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this case, the examiner considers that a person of ordinary skill in the art would consider that, in a baking oven containing at least one louver for an upper manifold and at least one louver for a lower manifold, an actuation arm, such as that of *Smith et al.*, would function to open one louver and correspondingly close another to adjust the air flows between upper and lower manifolds.

In the RCE filed 3/25/2004 applicant indicated claims 1-25 were canceled and presented new claims 26-45. The new independent claims (26, 35, and 38) are substantially identical to the prior independent claims except that these new claims now incorporate limitations that the adjustment arm opens the louvers in the upper manifold and correspondingly closes the louvers in the lower manifold. However, applicant has not argued how the incorporation of these limitations in the claims now renders applicant's claims allowable over the prior art and does not assert that the examiner's reasoning as presented in the Office Action mailed 9/22/2003 and represented above is in error. Accordingly, the examiner maintains that a person of ordinary skill in the art would consider that, in a baking oven containing at least one louver for an upper manifold and at least one louver for a lower manifold, as disclosed in *Lucke*, when modified to include an actuation arm, such as that of *Smith et al.*, the arm would function to open one louver and correspondingly close another to adjust the air flows between upper and lower manifolds.

### ***Conclusion***

6. This action is made non-final. A THREE month shortened statutory period for reply has been set. Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no

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event, however, may a reply be timely filed after SIX (6) months from the mailing date of this communication.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (703) 305-0450. The examiner can normally be reached on weekdays from 7:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus, can be reached at (703) 308-1935. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

jcc  
April 17, 2004

  
JOSIAH COCKS  
PATENT EXAMINER  
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